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No. 113, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

STATE OF MISSISSIPPI,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

REPORT OF WALTER P. ARMSTRONG, JR., SPECIAL MASTER

October 1, 1990

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In its opinion of March 1, 1988 in *United States of America v. State of Louisiana (Alabama and Mississippi Boundary Case)*, 485 U.S. 88, the Court said:

> In order to facilitate the resolution of any question that might remain as to Chandeleur Sound, leave is granted the State of Mississippi and the United States, respectively, without further motion, to file a complaint with this Court setting forth its claim to any undecided portion of Chandeleur Sound.
>
> (485 U.S. at p. 93)

The present proceeding was accordingly initiated by the State of Mississippi on April 29, 1988 by the filing of a Complaint and Statement in Support of Complaint praying that:

> [A] decree be entered declaring the rights of the State of Mississippi as against the United States in the subsoil and seabed underlying the waters of the Chandeleur Sound north of the Mississippi-Louisiana boundary and enjoining the defendant, its privies, assigns, lessees and other persons claiming under it, from interfering with the aforesaid rights of the State of Mississippi.

On June 13, 1988 the United States filed an answer to that complaint:

> The United States avers that the State of Mississippi has no rights to the submerged lands and resources in areas of the Chandeleur Sound disputed herein, that the Chandeleur Sound is neither juridical nor historic inland water and that the United States has never asserted a straight baseline as sanctioned by Article 4 of the Convention, 15 U.S.T. 1608, anywhere along its coast.

On June 27, 1988 the matter was referred to me as Special Master "to submit such reports as he may deem appropriate." This report is in response to that directive.

Since then the parties have worked diligently to resolve their differences, and have ultimately succeeded in doing so. Their agreement is reflected in a proposed decree, a copy of which is attached hereto as Appendix A and a stipulation, a copy of which is attached hereto as Appendix B. While the proposed decree does not undertake to settle the question as to whether Chandeleur Sound constitutes inland waters within the meaning of the Convention on the Territorial Sea and the Contiguous Zone (1964) 15 U.S.T. (Pt. 2) 1607, T.I.A.S. No. 5639 (hereinafter "Convention"), it would resolve the differences between the parties as to their respective rights under the Submerged Lands Act, 675 Stat. 29, 34 U.S.C.A. 1301-1315 (hereinafter "the Act"). A similar procedure was adopted by the Court in the decree entered in *United States v. Louisiana* (422 U.S. 13) determining, among many other things, the

respective rights of the United States and the State of Louisiana under the Act to exploit the resources within that portion of Chandeleur Sound lying within or adjacent to that state. The stipulation entered into by Louisiana and the United States (reproduced as Appendix A-2 to my report of July 31, 1974 in that proceeding) is basically similar in wording to that reproduced as Exhibit B hereto, and the line agreed upon is the same except for its northern terminus, which has been necessarily altered due to physical changes in Ship Island since the 1975 decree. Similar changes have resulted in the southern terminus of that line, which in 1976 was on the most northern tip of the most northerly of the Chandeleur Islands, now being located in open water near that point. The line established by the proposed decree reproduced as Exhibit A is therefore merely an extension northward of the line fixed by the 1975 decree, and if approved by the Court, will establish one continuous line from a point near the Chandeleur Islands to a point upon Ship Island which will determine the rights under the Act of both the States of Louisiana and Mississippi as against the United States.

That line is also the same as that embodied in the decree proposed by the United States in *United States v. Louisiana, et al. (Alabama and Mississippi Boundary Case)* No. 9 Original. In my report of March 16, 1987 in that proceeding I said that "While in my opinion the decree proposed by the United States would be a preferable solution", "in the absence of a stipulation or the adoption of a straight baseline the acceptance of the line proposed by the United States would amount to a modification of the Court's opinion of February 26, 1985 which would be beyond the scope of the reference to me as a Special Master." This language is referred to by the Court in its opinion of March 1, 1988 (485 U.S. 88, at p. 90) in the above cited case which authorized the present proceeding.

I still adhere to that view; but this is a different case, and in my opinion the matter is well within the scope of the reference of June 27, 1988 to me as Special Master. The United States has

made it clear that it does not adopt a straight baseline under the Convention (as only it has a right to do; see *United States v. California*, 381 U.S. 139 at pp. 167-169; *United States v. Louisiana*, 394 U.S. 11, at pp. 72-73). Instead the parties have entered into a stipulation approving the subject line for the limited purposes stated therein. (See Appendix B). I therefore have no hesitation in recommending the entry by the Court of a decree in the form indicated by Exhibit A attached hereto solely for the purpose stated therein and without international implications.

WALTER P. ARMSTRONG, JR.
Special Master

October 1, 1990

APPENDIX

APPENDIX A

JOINT PROPOSED DECREE

SUPREME COURT OF THE UNITED STATES

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STATE OF MISSISSIPPI, PLAINTIFF

v.

UNITED STATES, DEFENDANT

DECREE

On March 1, 1988, this Court granted leave to the State of Mississippi and the United States to file a complaint with the Court setting forth their respective claims to "any undecided portion of Chandeleur Sound." *United States v. Louisiana et al. (Alabama and Mississippi Boundary case)*, 485 U.S. 88 (1988). Thereafter, the State of Mississippi filed the above-captioned litigation which was timely answered by the United States.

Pursuant to a stipulation executed by the parties in resolution of the above-styled action, and solely for the purpose of determining the parties' respective rights under the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, in the vicinity of Chandeleur Sound, the parties have agreed to a line which shall permanently mark the baseline from which Mississippi's Submerged Lands Act grant is measured. That line is described in paragraph 3 below. Accordingly, the parties' joint motion for entry of decree is granted.

IT IS ORDERED ADJUDGED AND DECREED as follows:

1. As against the plaintiff State of Mississippi and all persons claiming under it, the United States has exclusive

rights to explore the area of the Continental Shelf reserved to the United States by the Submerged Lands Act, 43 U.S.C. 1302, and to exploit the natural resources of said area and the State of Mississippi is not entitled to any interest in such lands, minerals, and resources and said State, its privies, assigns, lessees and other persons claiming under it are hereby enjoined from interfering with the rights of the United States in such lands, minerals and resources. Solely for the purpose of determining each party's rights under the Submerged Lands Act, the line described in Paragraph 3 hereof is stipulated by the parties to henceforth represent and permanently mark the line from which Mississippi's Submerged Lands Act grant is measured.

2. As against the defendant United States and all persons claiming under it, the State of Mississippi has exclusive rights to explore the area of the Continental Shelf as provided by the Submerged Lands Act and to exploit the natural resources of said area, with the exceptions provided by Section 5 of the Submerged Lands Act, 67 Stat. 32, 43 U.S.C. § 1313. The United States is not entitled to any interest in such lands, minerals, and resources and the United States, its privies, assigns, lessees and other persons claiming under it are hereby enjoined from interfering with the rights of the State of Mississippi in such lands, minerals and resources. Solely for the purpose of determining each party's respective rights under the Submerged Lands Act, the line described in Paragraph 3 hereof is stipulated by the parties to henceforth represent and permanently mark the line from which Mississippi's Submerged Lands Act grant is measured.

3. Solely for the purpose of determining each party's respective rights under the Submerged Lands Act and in resolution of the above-captioned litigation, the following line is stipulated by the parties to henceforth represent and

permanently mark the line from which Mississippi's Submerged Lands Act grant is measured:

> A straight line from a point on the southern shore of the most westerly segment of Ship Island where X = 463004.481 and Y = 196885.896 in the Mississippi plane coordinate system, east zone, and X = 2752646.58 and Y = 568331.88 in the Louisiana plane coordinate system, south zone, to a point near the northern tip of the most northerly of the Chandeleur Islands where X = 2775787 and Y = 513796 in the Louisiana plane coordinate system, south zone, so far as said line lies on the Mississippi side of the Mississippi-Louisiana boundary.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to its previous orders or decrees herein or to this Decree or to effectuate the rights of the parties in the premises.

5. Nothing in this Decree or in the proceedings leading to it shall prejudice any rights, claims or defenses of the State of Mississippi as to its maritime lateral boundaries with the State of Louisiana, which boundary is not at issue in this litigation. Nor shall the United States in any way be prejudiced hereby as to such matters. Nothing in this decree shall prejudice any rights, claims or defenses of the United States or the State of Mississippi as to the inland water status of Chandeleur Sound. Nor shall anything in this Decree prejudice or modify the rights and obligations under any contracts or agreements, not inconsistent with this Decree, between the parties or between a party and a third party.

/s/ KENNETH W. STARR
Solicitor General
Department of Justice
Washington D.C. 20530

Date: July 23, 1990

/s/ MIKE MOORE
Attorney General
State of Mississippi
Carroll Gartin Justice Building
Jackson, Mississippi 39205-0220

Date: Aug. 7, 1990

/s/ WALTER P. ARMSTRONG, JR.
Special Master

Filed: Aug. 14, 1990

APPENDIX B

SUPREME COURT OF THE UNITED STATES

No. 113 Original

STATE OF MISSISSIPPI, PLAINTIFF

v.

UNITED STATES, DEFENDANT

STIPULATION

1. For the sole purpose of expediting the ultimate resolution of the above captioned action, and without deciding whether Chandeleur Sound is inland waters, it is hereby finally stipulated by the United States and Mississippi that the line hereinafter described shall henceforth represent and permanently mark the line from which Mississippi's Submerged Lands Act grant is to be measured for purposes of determining the respective rights of the State of Mississippi and the United States under the Submerged Lands Act, 43 U.S.C. 1301, *et seq.* (1953).

The said line is as follows:

> A straight line from a point on the southern shore of the most westerly segment of Ship Island where X = 463004.481 and Y = 196885.896 in the Mississippi plane coordinate system, east zone, and X = 2752646.58 and Y = 568331.88 in the Louisiana plane coordinate system, south zone, to a point near the northern tip of the most northerly of the Chandeleur Islands where X = 2775787 and Y = 513796 in the Louisiana plane coordinate system, south zone, so far as said line lies on the Mississippi side of the Mississippi-Louisiana boundary.

2. In entering this stipulation, Mississippi maintains its position that the whole of the Chandeleur Sound constitutes inland waters, as both an historic and juridical bay and through the use of straight baselines. Mississippi recognizes, however, the United States' position that these are not inland waters.

3. In entering this stipulation, the United States maintains that its agreement is not based on the belief that these are historic inland waters or described by a system of straight baselines, or are inland waters on any geographical or juridical basis, or on any other basis. The United States maintains its position that Chandeleur Sound is composed of territorial seas measured from closing lines of juridical bays and the low-water line of the mainland and islands rather than inland waters. The United States recognizes, however, Mississippi's position that these are inland waters.

/s/ KENNETH W. STARR — Date: July 23, 1990
Solicitor General
Department of Justice
Washington, D.C. 20530

/s/ MIKE MOORE — Date: August 7, 1990
Attorney General
State of Mississippi
Carroll Gartin Justice Building
Jackson, Mississippi 39205-0220

/s/ WALTER P. ARMSTRONG, JR. — Filed: Aug. 14, 1990
Special Master